No. 20310

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDMUND J. DUNNING,)
)
Plaintiff and)
Appellant)
)
vs.)
)
WILLIAM A. HUGGINS, G. J.)
GHISELLI, and MICHAEL G. RAFTON,)
)
Defendants and)
Appellees)
)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

APPELLANT'S REPLY BRIEF

FORREST E. MACOMBER
A. GRANT MACOMBER
ATTORNEYS FOR APPELLANT
416 Bank of America Bldg.
Stockton, California

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JURISDICTION -- ISSUE ON APPEAL

Jurisdiction is conferred upon this Court under the provisions of 12 USC Sec. 62 and 28 USC Par. 1331. The amount in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00.

The United States District Court dismissed this action for lack of jurisdiction on the ground that the required minimum jurisdictional amount of $10,000.00 is not present. Plaintiff appeals on the ground that the amount in controversy satisfies the jurisdictional requirement of the United States District Court in that the amount exceeds $10,000.00.

SUMMARY OF ARGUMENT

I.

This controversy is not moot because there are substantial ends to be served if the Plaintiff is allowed to prosecute this action.

II.

The reason for the rule that the jurisdictional amount in controversy is the amount of damages which Plaintiff, in good faith, avers, is the result of Defendants' tortious denial of Plaintiff's Federal right.

ARGUMENT

I.

THIS CONTROVERSY IS NOT MOOT BECAUSE THERE ARE SUBSTANTIAL ENDS TO BE SERVED IF THE PLAINTIFF IS ALLOWED TO PROSECUTE THIS ACTION.

In March, 1965, EDMUND J. DUNNING and another Voting Trustee of Central Valley National Bank stock, sought[1] to stop MICHAEL G. RAFTON from fulfilling his avowed intent to run the Central Valley National Bank for the benefit of MICHAEL G. RAFTON. Beginning with a suit to determine whether the Voting Trustees had the power to amend the Voting Trust in contravention of its express terms[1], six (6) more suits were filed[2] in moves and counter-moves for the control of the Central Valley National Bank.

Before that first suit was filed, MICHAEL G. RAFTON had organized others to "raid" the Bank: The first move, as his actions affect this litigation, was to secure an amendment of the Voting Trust to permit easier termination of it. That amendment is the subject of the first action in this series of litigation.

RAFTON'S "raiders" are now in control of the Bank. But in order to retain control, they must "break" the Voting Trust. Whether the Voting Trust will be broken, and, the ultimate question, who will run the Central Valley National Bank for whose benefit, will be up to the beneficial shareholders in the end. Therefore, communication with the

[1] See Appendix
[2] See Appendix

shareholders is essential for both sides.

Here the Plaintiff complains of the tactics of RAFTON'S "raiders" in securing exclusive control of the shareholder list which is critical to communication with the shareholders. If either side is prevented from communicating with the shareholders, there is a failure of information and a denial of the shareholders' free choice on the basis of merit.

Therefore it is essential that the Plaintiff continue to have access to the list of shareholders. For now, the Plaintiff has access. It was secured in lieu of appointment of a receiver in Dunning vs. Edger, where the Plaintiff complained that the Defendants, WILLIAM A. HUGGINS and G. J. GHISELLI, et al, were soliciting and exchanging Voting Trust certificates for common stock after G. J. GHISELLI had unilaterally declared the Voting Trust terminated. But we do not know how long the Plaintiff will have access to the list of shareholders.

Indeed, it appears that access is not doing as much good as was hoped: MICHAEL G. RAFTON, WILLIAM A. HUGGINS and others have since solicited proxies of the shareholders in violation of the Securities Exchange Act, §12g (1964). (That was the basis for Dunning, et al vs. Rafton, et al[2]). Because of the continuing iniquitous acts of RAFTON'S "ring" the Plaintiff can only hope to deter the Defendants by making them pay for each of their unlawful acts; so this controversy is not moot. If the Plaintiff can enforce his Federal rights

[2] See Appendix

in the United States Courts then perhaps the Defendants will not so readily abuse his rights.

II.

THE REASON FOR THE RULE THAT THE JURISDICTIONAL AMOUNT IN CONTROVERSY IS THE AMOUNT OF DAMAGES WHICH PLAINTIFF, IN GOOD FAITH, AVERS, IS THE RESULT OF DEFENDANTS' TORTIOUS DENIAL OF PLAINTIFF'S FEDERAL RIGHT.

The dignity of the United States Courts should be lent only to controversies of import. "There is no doubt that the Congressional policy is to prevent the clogging of the Federal dockets by unsubstantial claims."

A Federal Judge Looks at
His Jurisdiction, by the
Honorable Talbot Smith,
American Bar Association
Journal, November, 1965,
Vol. 51, No. 11

The Honorable Talbot Smith stresses that trivial cases should not take the Federal court's time. In the article cited, Judge Smith shows the development of the liberal treatment of the monetary requirement for Federal jurisdiction. His point is that the purpose of liberalizing the requirement was to admit Federal cases of import to the Federal courts, not to admit trivial cases just because a lawyer plays the "numbers game".

We ask the United States Court of Appeals to regard this as a controversy of import: Here is a corporation with staggering economic power. It is a corporation which exists by

virtue of an Act of Congress (12 U.S.C.A.); it is answerable to the United States Government (12 U.S.C.A.); its effect on the monetary system is a matter of national interest (M'Culloch v. Maryland 4 Wheat. [U.S.] 316, 4 L.Ed. 579). The evident necessity for fair play and full disclosure in soliciting the shareholders' support, and the public interest in who shall run the Central Valley National Bank make this a controversy of import. Therefore, the reason for the rule applies. And where the reason applies, so should the rule apply: The jurisdictional amount in controversy is the amount of damages which Plaintiff, in good faith, avers, is the result of Defendants' tortious denial of Plaintiff's Federal right.

DATED: December 3, 1965

Respectfully submitted,

A. GRANT MACOMBER
FORREST E. MACOMBER

By A. Grant Macomber
A. GRANT MACOMBER

ATTORNEYS FOR APPELLANT

APPENDIX

1. Dunning, et al, vs. Partridge, et al. Superior Court of the State of California, County of Alameda, No. 349045

2. Dunning, et al, vs. Rafton, et al. United States District Court, Northern District, Southern Division, No. 44216

2. Barboni, et al, vs. Partridge, et al. Superior Court of the State of California, County of Alameda, No. 351518

2. Huggins,et al, vs. Domich, et al. Superior Court of the State of California, County of Alameda, No. 351379

2. Central Valley National Bank, et al, vs. Wahyou, et al. United States District Court, Northern District, Southern Division, No. 43806

2. Dunning vs. Huggins, et al. The case at bar

2. Dunning, et al, vs. Edger, et al. Superior Court of the State of California, County of Alameda, No. 350641

CERTIFICATION

I certify that, in connection with the preparation of this Brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing Brief is in full compliance with those requirements.

A. Grant Macomber

A. GRANT MACOMBER

CERTIFICATE OF SERVICE BY MAIL

I, A. GRANT MACOMBER, certify that I am one of the Attorneys for Plaintiff and Appellant in this action, and that I served three copies of the above Appellant's Reply Brief by mail on Lempres and Seyranian, Attorneys for Appellee, MICHAEL G. RAFTON, and three copies of the Appellant's Reply Brief by mail on Fitzsimmons and Petris, Attorneys for Appellees, HUGGINS and GHISELLI, on December 3, 1965.

A. Grant Macomber

A. GRANT MACOMBER